

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2015

Public Authority: Lancashire North Clinical Commissioning Group
Address: Jubilee House
Lancashire Enterprise Business Park
Leyland
PR26 6TR

Decision (including any steps ordered)

1. The complainant made a request to Lancashire North Clinical Commissioning Group (LNCCG) for communications between former North Lancashire Teaching Primary Care Trust (NLTPCT) directors and Monitor and the Care Quality Commission in 2010 and whether these were provided to the Morecambe Bay Investigation.
2. The Commissioner's decision is that LNCCG did not hold the legacy information. However, the public authority provided its responses outside the statutory 20 working days and has therefore breached section 10(1) of the FOIA.

Request and response

3. On 22 August 2014 the complainant requested the following information:

'1. Copies (electronic copies only, no paper documents requested) of any recorded, written, printed, paper or electronic communication, including any associated files and replies, between all of (individually or combined) former North Lancashire Primary Care Trust Chairman William Bingley, former NLTPCT Chief Executive Janet Soo-Chung, former NLTPCT Medical Director Jim Gardner and former NLTPCT Finance Director Kevin Parkinson and Monitor and the Care Quality Commission dated during the months of June, July and August 2010, but excluding purely financial documents and any individual document/ file which is itself over 50 pages long. In other words, for each of the 4 NLTPCT directors I am requesting their individual and combined communications

with Monitor and/ or CQC which convey specific information, requests, ideas etc. in either direction which may or may not be related to UHMB registration/ authorisation and may or may not refer to UHMB failings, serious incidents or patients (patient names would be improbable in such documents but would be redacted in any case), but I am not requesting the text of published reports such as the PCT or UHMB Annual Report and Accounts, or the Fielding Report, for instance. I am not requesting the internal PCT report into UHMB compiled for the NLTPCT Board meeting of May 2010 which I already have, but I am requesting any internal PCT reports if they were included or specifically referred to in communications between any of the specified directors and Monitor/ CQC in the specified 3 months. Typically, the requested communications would be letters and emails of 1-10 pages long.

2. Information about whether and when each communication, document or file was provided to the [Morecambe Bay Investigation](#).

4. On 27 August 2014, LNCCG acknowledged the request and on 7 October 2014 LNCCG provided a response. The response letter was dated 28 August 2014 although the email from the public authority to the complainant was dated 7 October 2014.

'Legacy Information

I can confirm that NHS Lancashire North CCG are unable to provide the information requested as it is legacy information which can therefore be obtained from the Department of Health (see guidance below) Email requests for the Department of Health should be sent to Reviews&InformationTeam@dh.gsi.gov.uk. Please write "Freedom of Information" in the subject line.

Guidance

The Department of Health (DOH) is now the legally responsible body for answering all FOIs relating to the historic corporate work (not operational or clinical work that has been transfer to new bodies), of PCTs and SHAs.'

5. The complainant requested an internal review on 7 October 2014 but no response was received.
6. On 29 December 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. On 12 January 2015 the Commissioner telephoned and then wrote to LNCCG giving 20 days for the outcome of the Internal Review to be sent to the complainant. During the telephone call LNCCG explained that the

review is done by a different department but thought it had been completed and sent.

8. On 11 February 2015 the complainant contacted the Commissioner as he had not received a response from the public authority.
9. The Commissioner telephoned LNCCG on 16 February 2015. During the conversation, LNCCG became aware that an incorrect email address for the complainant had been used when sending the internal review. The initials 'tj' had been wrongly typed in as 'jt'. LNCCG agreed to send another copy to the complainant's correct address with a copy to the Commissioner.
10. The outcome of the internal review was sent to the complainant on 18 February 2015. The internal review was by Midlands and Lancashire Commissioning Support Unit and the outcome letter dated 20 October 2014 upheld the position of LNCCG that the requested information is not held as it is legacy information. The letter also apologised for the delay:
'Please accept our apologies for the delay in you receiving our response, unfortunately the email address was typed in incorrectly so any responses sent to yourself would not have been received. This has now been rectified.'
11. The Commissioner wrote to the complainant on 18 February 2015 and offered to close the case informally but the complainant wished the investigation to continue.
12. The complainant queried the date on the internal review letter as *'obviously bogus...which they have clearly fabricated since the "intervention of the Commissioner" but have given the fraudulent date of 20th October'*. He also referred to another of his complaints to another public authority. However, this other complaint is being considered by the Commissioner in a separate case and will not be referred to in this decision notice.
13. On 20 February 2015 the Commissioner contacted LNCCG for further arguments to support their position that the information is not held.

Scope of the case

14. The Commissioner has considered whether section 1 of FOIA was applied correctly in this case.

Reasons for decision

Section 1 – right of access to information

15. Where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
16. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
17. The public authority explained that LNCCG came into existence on 1 April 2013 and that all legacy information from North Lancashire Teaching PCT was held by the Department of Health.
18. In response to the Commissioner's questions about the location of the information, LNCCG confirmed that a

`thorough search of all files held by LNCCG was carried out, this included information held on networked computers used by key officials employed by the LNCCG who were involved in the original request.

If information was held by LNCCG it would have been held in electronic format.

No recorded information held by LNCCG relevant to the scope of the complainants request has been deleted/destroyed by LNCCG.

All files of the Primary Care Trust are now termed legacy files and not held by LNCCG. Information prior to April 2013 would be held by the Department of Health as this is deemed legacy information and would not have been retained by LNCCG.`
19. LNCCG also explained that `late provision of the information was due to an incorrect email address being recorded by a member of staff at the Commissioning Support Unit. Once this error was realised it was rectified immediately and the response was sent to the complainant. The original response to the internal review was sent out on the 20th October but unfortunately as mentioned above this was to an incorrect email address and was sent out again to the complainant on 18th February with an explanation as to why there was a delay and the deadline was breached.`

20. The Commissioner accepts that LNCCG does not hold the requested information.
21. Section 10 of the FOIA provides that a public authority should respond to a request for information within 20 working days. The Commissioner has found a breach in this case because LNCCG did not respond within 20 working days.

Other Matters

22. Although they do not form part of this decision notice, the Commissioner would draw LNCCG's attention to the following points.
23. The Code of Practice under section 45 of the FOIA provides that internal reviews should be undertaken "promptly". While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. This is set out in the Commissioner's Guide to Freedom of Information which is published on his website at http://ico.org.uk/for_organisations/freedom_of_information/guide/refusing_a_request#when-can-we-refuse-a-request-for-information-20 .
24. In this case the complainant did not receive the outcome of the internal review, despite telephone calls and letters from the Commissioner, for four months.
25. The Commissioner does not consider this case to be 'exceptional', so he expresses his concern that it took over 20 working days for the internal review to be completed. The Commissioner does not consider this to be satisfactory and would expect LNCCG to deal with reviews within the suggested deadlines in the future.
26. The [section 46 code of practice](#) covers good records management practice and the obligations of public authorities under the Public Records Acts to maintain their records in an ordered and managed way, so that they can readily retrieve information when it is needed.
27. These codes of practice are not directly legally binding but failure to follow them is likely to lead to breaches of the Act.
28. It is clear that errors made by LNCCG in the dating and addressing of their responses to the complainant caused confusion as to the validity of the contents of the letters and lead to breaches of FOIA. The

Commissioner expects LNCCG to make improvements in the accuracy of their record keeping in the future.

29. In summary, the Commissioner would expect that in the future LNCCG will ensure that requests for information are dealt with in a way which would not conflict with any of the provisions of the FOIA.

Right of appeal

30. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

31. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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